



DEPARTMENT OF COMMERCE

Patent and Trademark Office

[Docket No. PTO-P-2022-0026]

Submission of Comments Regarding the Patent Subject Matter Eligibility Guidance

AGENCY: Patent and Trademark Office, Department of Commerce.

ACTION: Notice.

SUMMARY: The United States Patent and Trademark Office (USPTO) is seeking public feedback on its existing patent subject matter eligibility guidance. The existing guidance, put in place in 2019, has contributed to more consistent examination. But there is more work to be done to impart clarity and certainty into patent eligibility. In addition to working with Congress on potential changes to the law and looking for opportunities in the courts, the USPTO is updating its guidance and has been seeking public input on the same. Given the overwhelming interest in the guidance, the USPTO will now accept feedback via the Federal eRulemaking Portal until October 15, 2022.

DATES: Comments on the USPTO's patent subject matter eligibility guidance must be received by October 15, 2022, to ensure consideration.

ADDRESSES: For reasons of government efficiency, comments on the USPTO's patent subject matter eligibility guidance must be submitted through the Federal eRulemaking Portal at www.regulations.gov. To submit comments via the portal, enter docket number PTO-P-2022-0026 on the homepage and click "Search." The site will provide a search results page listing all documents associated with this docket. Find a reference to this document and click on the "Comment Now!" icon, complete the required fields, and enter or attach your comments. Attachments to electronic comments will be accepted in Adobe® portable document format or

Microsoft Word® format. Because comments will be made available for public inspection, information that the submitter does not desire to make public, such as an address, a phone number, or other personally identifiable information (PII), should not be included in the comments.

Visit the Federal eRulemaking Portal for additional instructions on providing comments via the portal. If electronic submission of comments is not feasible due to a lack of access to a computer and/or the internet, please contact the USPTO using the contact information below (at **FOR FURTHER INFORMATION CONTACT**) for special instructions. Comments already submitted to the USPTO mailbox designated in the blog should be resubmitted through the Federal eRulemaking Portal at www.regulations.gov.

FOR FURTHER INFORMATION CONTACT: Raul Tamayo, Senior Legal Advisor, Office of Patent Legal Administration, Office of the Deputy Commissioner for Patents, at 571-272-7728.

SUPPLEMENTARY INFORMATION: On July 25, 2022, the USPTO published a blog titled “Providing clear guidance on patent subject matter eligibility” at www.uspto.gov/blog/director/entry/providing-clear-guidance-on-patent. As noted in the blog, the 2019 revisions to the USPTO’s eligibility guidance resulted in a 25% decrease in the likelihood of *Alice*-affected technologies receiving a first office action with a rejection for patent ineligible subject matter. See *Alice Corp. Pty. Ltd. v. CLS Bank Int’l*, 573 U.S. 208 (2014). Uncertainty about determinations of patent subject matter eligibility for the relevant technologies also decreased by a remarkable 44% as compared to the previous year. Despite this progress to achieve more consistent examination under section 101, there is more work to be done. As part of its multi-pronged approach to imparting more clarity and certainty into patent eligibility, in

addition to working with Congress and looking for opportunities in the courts, the USPTO is revising its subject matter eligibility guidance.

In the July 25 blog post, the USPTO initially encouraged the public to email thoughts or comments on the guidance specified in Manual of Patent Examining Procedure 2106 to a uspto.gov mailbox by September 15, 2022. However, given the overwhelming interest in this subject matter, the USPTO is extending the deadline, and the public may now submit feedback until the new deadline of October 15, 2022. In addition, comments may now be submitted through the Federal eRulemaking Portal at www.regulations.gov. Comments are no longer being received at the uspto.gov mailbox, though any previously-submitted comments through the mailbox will be given equal consideration. Please see the information provided earlier in this notice (at **ADDRESSES**) for instructions on submitting feedback via the portal. This new method of submitting feedback will facilitate making comments publicly accessible through the Federal eRulemaking Portal.

Katherine K. Vidal,

Under Secretary of Commerce for Intellectual Property and Director of the United States Patent and Trademark Office.

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